



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 25, 2007

Mr. Denis C. McElroy
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2007-06565

Dear Mr. McElroy:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 279752.

The Fort Worth Police Department (the "department") received a request for all information regarding two specified incident reports involving a named individual. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information made confidential by statute. *See* Gov't Code § 552.101. Section 58.007 of the Family Code provides as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c), (e). Incident report number 07-19359 involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply. Thus, this report is confidential under section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses confidentiality provisions such as section 261.201 of the Family Code. Section 261.201(a) provides:

(a) *The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:*

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Based on the information provided, we find that report number 07-17562 was used or developed in an investigation of alleged or suspected child abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of Family Code, ch. 261). Thus, the information regarding this report is generally confidential under section 261.201 of the Family Code. Section 261.201(a) provides, however, that *information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” Id.* § 261.201(a).

The requestor asserts a right of access to portions of the submitted information pursuant to section 22.082 of the Education Code. Section 22.082 provides that “[t]he State Board for Educator Certification [“SBEC”] shall obtain from any law enforcement or criminal justice agency all criminal history record information [“CHRI”] that relates to an applicant for or holder of a certificate.” Educ. Code § 22.082. CHRI is defined as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and

notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2); *see also id.* §§ 411.090 (SBEC is entitled to obtain CHRI from Texas Department of Public Safety (“DPS”) about person who has applied to SBEC for certificate under Subchapter B, Chapter 21, Education Code), 411.087(a)(2) (agency that is entitled to obtain CHRI from DPS is also authorized to “obtain from any other criminal justice agency in this state criminal history record information maintained by that [agency]”); *cf. Brookshire v. Houston Indep. Sch. Dist.*, 508 S.W.2d 675, 678-79 (Tex. Civ. App.—Houston [14th Dist.] 1974, no writ) (when legislature defines term in one statute and uses same term in relation to same subject matter in latter statute, later use of term is same as previously defined).

The requestor is a staff investigator with the Texas Education Agency (“TEA”), which has assumed the duties of SBEC. The requestor states that TEA is conducting an investigation of an individual who has applied for or currently holds educator credentials.¹ Thus, in this instance, section 22.082 is applicable state law for purposes of section 261.201(a). However, this office cannot determine whether the release of the CHRI is consistent with the Family Code. If the department determines that release is consistent with the Family Code, the department must release information from incident report number 07-17562 that shows the type of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See generally* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under statutory predecessor to Act). In that instance, the department must withhold the remainder of the information regarding incident report number 07-17562 pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

If, however, the department determines that release of the CHRI is not consistent with purposes of the Family Code, the department must withhold the information regarding incident report 07-17562 in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 (1986) (addressing statutory predecessor to section 261.201).

In summary, the department must withhold incident report number 07-19359 pursuant to section 552.101 in conjunction with section 58.007 of the Family Code. If the department determines that release of the educator’s CHRI in incident report number 07-17562 is consistent with the Family Code, then the CHRI must be released.² The remaining

¹The 79th Texas legislature passed House Bill 1116, which required the transfer of SBEC’s administrative functions and services to the TEA, effective September 1, 2005.

²We note that, because the requestor may have a special right of access to this information in this instance, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

information regarding this incident report, however, must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If, however, the department determines that release is not consistent with the purposes of the Family Code, then the information regarding incident report number 07-17562 must be withheld in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/ma

Ref: ID# 279752

Enc. Submitted documents

c: Mr. Ruben Diaz
Staff Investigator
Texas Education Agency
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(w/o enclosures)